



## UNITED STATES DEPARTMENT OF COMMERCE

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18N2/1022

EXAMINER	
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ART UNIT	PAPER NUMBER
1819	14

DATE MAILED: 10/22/97

Below is a communication from the EXAMINER in charge of this application

## COMMISSIONER OF PATENTS AND TRADEMARKS

## ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- a) ☐ is extended to run \_\_\_\_\_ or continues to run \_\_\_\_\_ from the date of the final rejection
- b) ☒ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☒ Appellant's Brief is due in accordance with 37 CFR 1.192(a).
- ☒ Applicant's response to the final rejection, filed 9/11/97 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:
- ☐ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:
- ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
  - ☐ They raise new issues that would require further consideration and/or search. (See Note).
  - ☐ They raise the issue of new matter. (See Note).
  - ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE:

2. ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing an appeal, the proposed amendment ☒ will be entered ☐ will not be entered and the status of the claims will be as follows:

Claims allowed: NoneClaims objected to: NoneClaims rejected: 8, 10, 11, 13, 18-27, & 35-55

However:

- ☐ Applicant's response has overcome the following rejection(s): Amendment of cl. 8, 13, 15, 18-21, & 23-26 partially overcome obj. rejec. & rej. of cl. 8, 10, 11, 13, 15, & 18-27 for non-enablement of invention using any herpesvirus.

4. ☒ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because claims still broadly recite unspecified HSV or adenovirus, & thus appear to fail to specify exemplified mode of admin. (direct injection into tumor) so that the scope of the claims is not commensurate with the support the disclosed examples
5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☐ Other

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GROUP 1800

ie. the disclosed examples are  
not commensurate with successful  
operation of the broadly claimed  
methods.